
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

ERIC GERACE,

Plaintiff,

v.

UNIVERSITY OF UTAH, et al.,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:22-cv-00349-JNP-CMR

Judge Jill N. Parrish

Before the court are three motions filed by pro se plaintiff Eric Gerace: (1) Motion to Dismiss Summons for Tom Holmoe Without Prejudice (Plaintiff's Motion to Dismiss) (ECF 27); (2) Motion to Withdraw Summons against All Actionable Parties (Motion to Withdraw Summons) (ECF 28); and (3) Motion for Extension of Time to Serve (Motion for Extension) (ECF 21). Also before the court is defendant Club Pilates Millcreek's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Club Pilates Millcreek's Motion to Dismiss) (ECF 20).

Magistrate Judge Cecilia M. Romero issued a Report and Recommendation that the court grant Plaintiff's Motion to Dismiss and Motion to Withdraw Summons and deny Plaintiff's Motion for Extension and Club Pilates Millcreek's Motion to Dismiss, ultimately recommending that the entire action be dismissed without prejudice. Judge Romero notified the parties that a failure to file a timely objection to her recommendation could waive any objections to it. No objection was filed within the allotted time.

Because no party objected to the Report and Recommendation, any argument that it was in error has been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if "the interests of justice so

dictate.” *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). In determining whether the interests of justice require an exception to the waiver rule, the Tenth Circuit has “considered factors such as ‘a *pro se* litigant’s effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised.’” *Duffield v. Jackson*, 545 F.3d 1234, 1238 (10th Cir. 2008). In this case, there is no indication that the interests of justice require it to deviate from the waiver rule. Thus, the court finds that the interests of justice do not warrant deviation from the waiver rule and ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation, ECF No. 30, is ADOPTED IN FULL.
2. The court GRANTS Plaintiff’s Motion to Dismiss (ECF 27) and Defendant Holmoe is DISMISSED without prejudice.
3. The court GRANTS Plaintiff’s Motion to Withdraw Summons (ECF 28) and Defendants Howe, Chivers, Loosli, and Club Pilates Millcreek are DISMISSED without prejudice.
4. The court DENIES Plaintiff’s Motion for Extension (ECF 21) and Defendants Harlan, Tanner, Miller, Krey, Horosdyski, University of Utah, University of Utah Athletics Association, University of Utah Police, and State of Utah are DISMISSED without prejudice.
5. The court DENIES Club Pilates Millcreek’s Motion to Dismiss (ECF 20) as moot.
6. The court DISMISSES this action without prejudice.

DATED the 18th day of September, 2023.

BY THE COURT:



JILL N. PARRISH
United States District Judge